

DEPARTMENT OF STATE REVENUE

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ISSUE

Food for Immediate Consumption – Bakery Products

Authority: IC 6-2.5-5-20; 45 IAC 2.2-5-39(b) (3); 45 IAC 2.2-5-43; 45 IAC 2.2-5-44

45 IAC 2.2-5-39. Food for human consumption... examples.

(a) The gross retail tax act specifies the items which constitute tax exempt food for human consumption.
"NONTAXABLE ITEMS"

Bakery Products

[1982]

(b) The following items are exempt from sales and use tax if sold without eating utensils provided by the seller:

...

(3) Bakery items, including bread, rolls, buns, biscuits, bagels, croissants, pastries, donuts, Danish, cakes, tortes, pies, tarts, muffins, bars, cookies, and tortillas.

[2004]

45 IAC 2.2-5-43. Food for immediate consumption.

(a) Sales of food which ordinarily is sold for immediate consumption at or near the premises of the seller are taxable...

[1982]

45 IAC 2.2-5-44. Combination business; sales of groceries and meals.

Where a person operates a combination-type business at one location such as an eating place combined with a donut or pastry shop, sales by such retailer of nontaxable grocery items... are nontaxable when sold for home consumption... For example, bulk sales of donuts... are nontaxable when sold for home consumption. However, individual orders (e.g. ... a single serving bakery item)... [is]... taxable regardless of whether sold for consumption on the premises or sold on a "take-out" basis for off-premises consumption.

[1987]

I. GENERAL STATEMENT

Prior to January 1, 2004, the sales of bakery products are exempt from sales tax unless sold as a single serving. A single serving is subject to the collection of sales tax.

Effective January 1, 2004, the sales of bakery items are not taxable unless they are sold through a vending machine, sold with eating utensils provided by the seller or sold in a heated state. [FN 1]

II. PRIOR TO JANUARY 1, 2004

Sales of "food for human consumption" as defined in 45 IAC 2.2-5-39 are not subject to the collection of sales tax. Since food for human consumption includes bakery products, they are exempt from the collection of sales tax.

The term "food for human consumption" does not include food which is sold for immediate consumption as defined in 45 IAC 2.2-5-43. The sale of a single serving of a nontaxable bakery product, i.e., one donut, is subject to the collection of sales tax. The department presumes the donut is purchased for "immediate consumption."

The bulk sale of a nontaxable bakery product, i.e., more than one donut, is not subject to the collection of sales tax. The department presumes the donuts are purchased for home consumption.

SUMMARY:

- A. A sales transaction which includes more than one donut is exempt.
- B. A sales transaction which includes not more than one donut is taxable.

II. EFFECTIVE JANUARY 1, 2004

The sales of bakery items are exempt from the collection of sales tax unless they are:

- A. sold through a vending machine;
- B. sold with eating utensils [FN 2] provided by the seller; or,
- C. sold in a heated state.

[FN 1] Sales Tax Clarification letter, January 2004

[FN 2] Eating utensils include plates, knives, forks, spoons, glasses, cups, napkins, or straws (IC 6-2.5-5-20[c] [7]).